

Thursday 23 August 23, 2012 BDCP Permit Coordination Meetings

Two meetings were held. In the Morning, Adam Riley and I met with DWR and Erin Foresman (EPA). In the afternoon I met with EPA, USFWS, NMFS, and BOR.

Summary of the morning Corps-EPA-DWR meeting at DWR

Mike Nepstad (SPK), Adam Riley (SPK), Erin Foresman (EPA), Cassandra Enos (DWR), Russ Stein (DWR), Sue Ramos (DWR), Brian Plant (DWR), Karen Shaffer (DWR), Michelle Morrow (DWR)

[This was a summary meeting, which started late and needed to end on time, so topics were not discussed to resolution, but rather to tee them up for subsequent meetings]:

- 1) Wetland mapping is still ongoing by DWR, no information on when it would be submitted to us and EPA. They do plan to have this information in the draft EIR/S.
- 2) A document is under preparation which is supposed to show how the BDCP took 1,300 alternatives and whittled them down to one. DWR is sure that when we see this all of the EPA concerns on Purpose and 404 (b)(1) will be addressed. No information on when this document would be provided. It's also not clear if this would be part of the EIR/S or if it would be a separate document.
- 3) Current DWR schedule for the EIR/S is public release at end of September. They were non-committal as to the likelihood of that happening. The second draft of all the chapters and analysis relevant to Corps permitting have not yet been provided for our review.
- 4) DWR plans to submit applications to Corps after ROD/NOD and HCP are signed.
- 5) DWR very, very much wants to get around the need for 65%-100% designs for the 408 and are working on a number of plans to do this including (but not limited to): asking for 10/404 permits first (and so do all the construction except for the part under 408 jurisdiction); having the Corps waive the need for 65%-100% designs and just give 408 approval at a lesser level (i.e., to have us issue 408 approval at 30% or even 10%); and breaking the pipeline into segments and getting separate permits so that those segments without 408 jurisdiction can be completed first. Basically they have decided that they are not going to do the design engineering until after they have an HCP permit in hand, and because of that they would have to then wait several years before they could get a 408 permit by the standard process. I assume they don't want to spend money designing something until they have the ESA permit for it. They also keep saying that all NEPA requires is a determination of significance or not, and designs can vary as long as significance doesn't change. Adam and I (and Erin) weren't sure how their 408 process bypass concepts could be viable, but they are going to put together some proposals to show us at a later date. Whenever that happens we would need to have Randy Olson there for that meeting. There is still much educating of DWR to do on 408.
- 6) Most of the meeting was centered on the Overall Purpose statement and concept of the 404(b)(1) alternatives analysis. Erin (EPA) repeated concern that Overall Purpose statement proposed by DWR screens out all of the alternatives except for the preferred alternative. DWR explained that their yet to

be completed analysis of alternatives for the HCP/EIR/EIS would irrefutably toss out all of the alternatives but the preferred, and so having the preferred alternative mentioned in the Overall Purpose statement makes sense because no other alternatives would remain at that point. Their view is that the EIR/S has the many alternatives for their level 1 or programmatic analysis only, and the project level information on just the preferred alternative is level 2 analysis which supports our permit decision, so that out 404(b)(1) analysis should just be looking at only the preferred alternative. In other words, we should pretend that the level one analysis was done ahead of time and that analysis is closed, and all that we need concerns ourselves with is the Level 2 analysis, which consists of just the preferred alternative. Erin offered to take this viewpoint back to Tom and Karen for further consideration.

7) Donuts were provided, but not coffee. Donuts were a bit dry, need to bring a beverage for subsequent meetings.

8) Next meeting is October 25, 2012 at 830 to 10 am.

Summary of the afternoon Corps-EPA-USBR-USFWS-NMFS meeting at SPK

Mike Nepstad (SPK), Erin Foresman (EPA), Tom Hagler (EPA), Jim Monroe (DOI), Karen Schwinn (EPA), Patty Idlof (USBR), Kaylee Allen (DOI), Federico Barajas (USBR), Yvette Redler (NMFS), Lori Rinek (USFWS)

Meeting was largely just Erin and I giving a status update on where we were with DWR.

EPA continues to be unhappy with the Overall Purpose statement, and will either call or email for further discussion.

Only specific input from our other guests was that Jim Monroe agreed with EPA that our 404(b)(1) had to include looking at the range of alternatives in the EIR/S, as the HCP standard for screening alternatives was not equivalent to our screening.

USBR and others had no specific objection to language to the Overall Purpose statement, as modified by removing language about the CVP.

Our guests requested that the next meeting be only Fed agencies only. I am going to try for afternoon of October 25.